

The first question that will be addressed is whether the Appeals Board has jurisdiction to review this preliminary hearing Order. The Appeals Board is authorized to review a preliminary hearing order if the appealing party raises an issue that is specifically set forth as a jurisdictional issue in K.S.A. 44-534a(a)(2), as amended by S.B. 649 (1996), or when the appealing party alleges that the administrative law judge exceeded his or her jurisdiction as set forth in K.S.A. 44-551, as amended by S.B. 649 (1996). The Appeals Board is unable to ascertain either from claimant's Application for Review or from the Administrative Law Judge's Order the reason claimant's request for preliminary benefits

was denied. However, after reviewing the preliminary hearing evidentiary record and the briefs of the parties, the Appeals Board finds that the Administrative Law Judge denied claimant benefits because he found claimant failed to prove his accidental injury arose out of and in the course of his employment with respondent. This issue is specifically set forth in K.S.A. 44-534a(a)(2), as amended by S.B. 649 (1996), as a jurisdictional issue that grants the Appeals Board authority to review a preliminary hearing order.

Respondent admitted that claimant sustained a myocardial infarction while performing his regular job duties for the respondent on November 13, 1995. Respondent, however, denied that claimant's myocardial infarction arose out of his employment with the respondent. An injury arises "out of" the employment if it arises out of the nature, conditions, obligations and incidents of employment. See Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 502, 704 P.2d 394, rev. denied 238 Kan. 878 (1985). A claim for compensation shall not be paid for an employee with coronary or coronary artery disease unless the exertion of the work necessary to precipitate the disability was more than the employee's usual work. See K.S.A. 44-501(e).

Claimant argued that he had presented credible evidence at the preliminary hearing that proved the exertion of the work he performed on November 13, 1995 was more than his usual work and, thus, precipitated the myocardial infarction. Claimant testified he climbed 600 stairs in one and a half hours on November 13, 1995. He further testified he had not performed that task to that extent but had walked that many stairs before. Claimant also testified that the grain elevators that he serviced all were 150 to 200 feet high. He went on to testify that some of these elevators did not have stairwells and, in fact, contained only ladders that required him to climb up and down when he serviced the elevators. Claimant contended that the medical records of Dr. David Schmeidler and Dr. James C. Mershon (a cardiologist) admitted into evidence during the preliminary hearing established that claimant's myocardial infarction was caused by claimant's work activities.

Claimant has the burden to prove by a preponderance of the credible evidence his right to an award of compensation. See K.S.A. 44-501(a) and K.S.A. 44-508(g). The Appeals Board finds, for preliminary hearing purposes, that the Administrative Law Judge's Order that denied claimant preliminary benefits should be affirmed. The Appeals Board finds the claimant failed to prove that it is more probably true than not that his work activities performed on the date of his myocardial infarction required more exertion than his usual job duties. Additionally, the Appeals Board finds that the medical records admitted into evidence at the preliminary hearing do not establish a causal relationship between claimant's work activities and his resulting myocardial infarction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated April 10, 1996, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
David M. Druten, Kansas City KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director